

## Message Text

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ACTION NEA-10

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E.O. 11652: N/A

TAGS: PINT, IN

SUBJ: IMPLICATIONS OF BOMBAY COURT DECISION ON CENSORSHIP

REF: (A) STATE 47292, (B) NEW DELHI 2751

1. THE FREEDOM FIRST DECISION WAS A "VICTORY" FOR THE "LEGAL RESISTERS" ON A PAR WITH KULDIP NAYAR'S SUCCESSFUL HABEAS CORPUS CHALLENGE (NEW DELHI 12528) OR WITH OTHER ISOLATED CASES (NEW DELHI 17174) THAT SUPPORTERS OF PRESS FREEDOMS AND INDIVIDUAL LIBERTIES HAVE TAKEN TO THE COURTS SINCE THE EMERGENCY. BUT THESE VICTORIES ARE ONE SHOT AFFAIRS. THERE IS NO RIPPLE EFFECT. WHEN THE PRESENT NATIONAL "DEBATE" ON AMENDING THE CONSTITUTION ENDS, IT IS ALMOST CERTAIN THAT DIFFERENCES BETWEEN THE JUDICIARY AND THE GOI ON THE QUESTIONS OF THE COURT'S WRIT PETITION AND JUDICIAL REVIEW POWERS WILL BE DECIDED ON THE GOI'S FAVOR. (GOI CLAIMS THAT PARLIAMENTARY LEGISLATION CANNOT BE OVERRIDDEN BY THE COURTS, SINCE THE INDIAN PARLIAMENT, AS WITH THE BRITISH PARLIAMENT, IS SUPREME; THE SUPREME COURT'S 1973 "BASIC STRUCTURE" DECISION, HOWEVER, QUALIFIED THIS POSITION).

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2. AS WE COMMENTED IN A-43, EVEN THE MORE OPTIMISTIC AMONG THE SMALL BAND OF LAWYERS AND NEWSPAPERMEN TAKING THE GOVERNMENT TO COURT ON INDIVIDUAL CASES ADMIT THAT THE LONG-TERM BATTLE IS ALREADY LOST. MRS. GANDHI WILL USE THE APPOINTMENT OR TRANSFER OF JUDGES, CONSTITUTIONAL AMENDMENTS AND, IF NEED BE, WHOLESALE CONSTITUTIONAL CHANGES TO NEUTRALIZE THE JUDICIARY'S INDEPENDENCE. AT A RECENT LAWYERS CONFERENCE IN CALCUTTA (PART OF THE "NATIONAL DEBATE") LAW MINISTER GHOKALE, THE ATTORNEY GENERAL OF INDIA, GOI UNION MINISTER OF STATE FOR DEFENSE GADGIL AND CONGRESS PRESIDENT BAROAH ALL CALLED FOR A CURTAILMENT OF THE HIGH COURT'S WRIT POWERS CONTAINED IN ARTICLE 226 OF THE CONSTITUTION. A LAWYER CLOSE TO THE PRIME MINISTER WHO WORKED ON HER ALLAHABAD DEFENSE TELLS US IT IS ABSOLUTELY CERTAIN ARTICLE 226 WILL BE CHANGED WHEN THE "DEBATE" ENDS, WHICH IS LIKELY TO BE SOMETIME IN 1976. AS REPORTED IN OUR 17174 LAST DECEMBER, THIS ACTION WOULD STRICTLY LIMIT OR ALTOGETHER BOTTLE UP THE LEGAL CHANNELS NOW BEING UTILIZED BY THE "LEGAL RESISTERS," WHETHER THEIR FOCUS IS PRESS FREEDOM OR CIVIL LIBERTIES.

3. THE FREEDOM FIRST DECISION (WHICH THE MAHARASHTRA GOVERNMENT AND WE PRESUME GOI DECIDED NOT TO APPEAL TO THE SUPREME COURT) AND A POSSIBLE SUPREME COURT DECISION ON THE HABEAS CORPUS CASE NOW BEFORE IT AGAINST THE GOI (SEE PARA 3 NEW DELHI 17174) WILL ALMOST CERTAINLY ADD TO THE PRESSURES ON MRS. GANDHI TO INITIATE PARLIAMENTARY LEGISLATION TO CIRCUMSCRIBE THE COURTS. BUT, WITH THE FORMIDABLE POWERS GIVEN MRS. GANDHI UNDER THE EMERGENCY, AND THE GOI'S ABILITY TO INTIMIDATE "LEGAL RESISTERS" THERE IS NO REAL THREAT TO THE PRIME MINISTER'S POSITION. MASANI, FREEDOM FIRST EDITOR, WAS PREPARED TO TAKE HIS CASE TO THE COURTS. THERE ARE RELATIVELY FEW EDITORS WITH HIS COURAGE, FOR THE DISADVANTAGES ARE GREAT. IF AN EDITOR IS WILLING TO TAKE A CHANCE, HE MAY WIN - IN ONE STATE HIGH COURT - BUT NOT NECESSARILY IN ANOTHER, OR THEREAFTER, IN A LENGTHY AND EXPENSIVE APPEALS PROCESS IN THE SUPREME COURT. BUT HE MAY ALSO FIND HIS PASSPORT, TAX REPORTS, OR THE POSITION OF CLOSE RELATIVES UNDER CLOSE AND LIMITED OFFICIAL USE

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PAINFUL OFFICIAL SCRUTINY WHICH NOT MANY EDITORS OR PUBLISHERS RELISH.

4. FINALLY, IT IS NOTEWORTHY THAT THE CONSORS ARE INCREASINGLY CARRYING OUT THEIR FUNCTIONS IN WAYS LESS VULNERABLE TO COURT ACTION. ONE APPROACH, USED SINCE THE EMERGENCY BEGAN - BUT MORE FREQUENTLY IN RECENT WEEKS - IS "TO ADVISE" EDITORS WHETHER OR NOT TO USE A STORY, AND TO DO

IT BY TELEPHONE RATHER THAN IN WRITING. THERE ARE ALSO  
A VARIETY OF DELAYING TACTICS. THOUGH MORE SUBTLE AND  
INDIRECT, (DESCRIBED MORE FULLY IN USIS FIELD MESSAGE  
FM-04-C OF JANUARY 30, 1976 "OUTLOOK FOR THE PRESS IN  
INDIA."), THESE NEW MEANS ARE NO LESS EFFECTIVE IN CON-  
TINUING THE STRICT CENSORSHIP THAT HAS BEEN IN EFFECT  
SINCE THE EMERGENCY. AND EDITORS TELL US THAT THEY SEE  
NO SIGNS OF RELAXATION WHATSOEVER.  
SAXBE

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